

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-569

TIGER ROSE GROUP, LLC

vs.

ALCOHOLIC BEVERAGES CONTROL COMMISSION & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Tiger Rose Group, LLC (Tiger Rose), appeals from a judgment entered in the Superior Court upholding the denial of Tiger Rose's application to transfer an "all alcohol" liquor license. The application initially was denied by the city of Quincy board of license commissioners (Quincy); the Alcoholic Beverages Control Commission (ABCC) upheld Quincy's decision. Tiger Rose now argues that Quincy abused its discretion in denying its request. We affirm.

1. Background. Tiger Rose applied to Quincy to transfer an all alcoholic beverage license it held at its Hong Kong Eatery restaurant to a proposed new restaurant with a new location in the congested Wollaston business district. Quincy denied the application on several grounds, but particularly on

¹ City of Quincy, intervener.

the grounds that (i) Tiger Rose previously represented to the city of Quincy (city) zoning board of appeals that the new location would not have a liquor license; (ii) parking in the Wollaston business district already was heavily congested and insufficient to support the new location; and (iii) the addition of a liquor license would cause patrons to increase the time spent at the new location and therefore worsen the already untenable parking situation.

At the ABCC, Tiger Rose argued that (i) Quincy had approved liquor licenses for other businesses in the same general vicinity and Quincy's denial therefore was arbitrary; (ii) Quincy was biased against Tiger Rose because Tiger Rose had obtained a liquor license for another establishment only after litigation with the city; (iii) Tiger Rose had not represented at an earlier zoning board of appeals hearing that its new Wollaston business district location would not have a liquor license; and (iv) no particular parking problems existed in the Wollaston business district. The ABCC, in a comprehensive memorandum of decision, rejected Tiger Rose's arguments and concluded that Quincy's decision to deny the application was well supported and within its discretion. In so doing, the ABCC made extensive factual findings and addressed each of Tiger Rose's claims specifically. Tiger Rose sought judicial review in the Superior Court pursuant to G. L. c. 30A, § 14.

On review of the cross motions for judgment on the pleadings, the judge concluded that the ABCC's decision to deny Tiger Rose its transfer license was not arbitrary or capricious. Tiger Rose timely appealed.

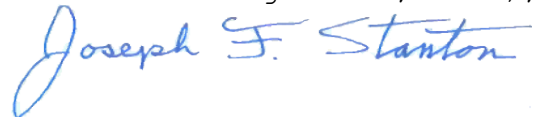
2. Discussion. "The scope of review of the [ABCC]'s decision, both in the Superior Court and in the [appellate courts], is defined by G. L. c. 30A, § 14." Howard Johnson Co. v. Alcoholic Beverages Control Comm'n, 24 Mass. App. Ct. 487, 490 (1987), quoting Burlington v. Labor Relations Comm'n, 390 Mass. 157, 161 (1983). However, appellate review under § 14 is limited to determining whether the agency's decision was "unsupported by substantial evidence or is arbitrary or capricious, an abuse of discretion, or not in accordance with law." Cape Cod Collaborative v. Director of the Dep't of Unemployment Assistance, 91 Mass. App. Ct. 436, 440 (2017), quoting Coverall N. Am., Inc. v. Commissioner of the Div. of Unemployment Assistance, 447 Mass. 852, 857 (2006). We "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14 (7). "As the party challenging an agency decision under G. L. c. 30A, § 14, [Tiger Rose] has the burden of proof to demonstrate the invalidity of the administrative determination"

(citation omitted). Burke v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds, 90 Mass. App. Ct. 203, 206 (2016).

Tiger Rose has failed to meet its burden of demonstrating that the administrative determination was not valid. Id. at 211-212. The ABCC concluded that Quincy's decision to deny Tiger Rose's application for license transfer was "supported by the record, was not based upon an error of law, and thus, was not arbitrary and capricious." Tiger Rose's argument here, essentially, is that "the factual premise on which the [ABCC] purports to exercise discretion is not supported by the record. . . ." After careful review, we disagree with that argument, and see no error in Quincy's denial of the application for license transfer.

Judgment affirmed.

By the Court (Hanlon,
Kinder & Englander, JJ.²),



Clerk

Entered: August 15, 2019.

² The panelists are listed in order of seniority.